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Cases, Regulations, and Statutes

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CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

FEDERAL TAXATION-*ALM* § 13.07.*

DISCHARGE. The debtor did not file timely returns for 1988 and 1989. The IRS constructed substitute returns and made assessments based on those returns. The debtor did not respond to any of the IRS assessments or requests for returns. The IRS began levying against the debtor's property and, three years later, the debtor agreed to file returns. The returns filed by the debtor did not vary substantially from the IRS original substitute returns and assessments. The debtor filed for Chapter 7 more than three years after filing the returns and argued that the plain language of Section 523(a)(1)(B)(i) allowed the discharge of the taxes for 1988 and 1989. The court noted that Section 523(a)(1)(B)(i) applied to discharge taxes for which a return was *required* and filed more than three years before the bankruptcy petition was filed. The court held that, once the IRS constructed the substitute returns and made an assessment, the debtor was no longer required to file a return; therefore, Section 523(a)(1)(B)(i) no longer applied to make the taxes nondischargeable. ***In re*** **Walsh, 2002-1 U.S. Tax Cas. (CCH) ¶ 50,478 (D. Minn. 2002),** ***aff'g*****, 260 B.R. 142 (Bankr. D. Minn. 2001)**.

FEDERAL AGRICULTURAL PROGRAMS

BEEF CHECK-OFF. The plaintiffs were livestock producers subject to the assessment of one dollar per head of cattle to be used by the USDA and the Cattlemen's Beef Board for promotion of the beef industry, as provided by the Beef Promotion and Research Act, 7 U.S.C. § 2901 *et seq*. The plaintiffs challenged the law as an unconstitutional violation of the First Amendment. The plaintiffs objected to the assessment because it paid for advertising for beef products, such as steak, which is not the product which the plaintiffs sold, live cattle. The court held that, under *United States Department of Agriculture v. United Foods, Inc., 533 U.S. 405, aff'g, 197 F.3d 221 (6th Cir. 2000)*, the assessment was a violation of the plaintiffs' first amendment rights of free speech and association. The court made its temporary injunction permanent and prospective from July 15, 2002. The court also refused to issue a stay pending appeal to the Eighth Circuit or the Supreme Court, citing the continuing harm to the producers who are under stress from economic and environmental conditions. See Harl, "Future of Commodity Check-Offs," 12 *Agric. L. Dig.* 113 (2001). **Livestock Marketing Ass'n v. USDA, CIV 00-1032, 2002 U.S. Dist. LEXIS 11625 (D. S.D. June 21, 2002)**.

DISASTER PAYMENTS. The FSA has issued proposed regulations which would amend its regulations for the Disaster Set-Aside program to provide the disaster set-aside more quickly to those who can benefit most from the program. **67 Fed. Reg. 41869 (June 20, 2002)**.

GUARANTEED LOANS. The FSA has adopted as final regulations which provide that the specific dollar amount of guaranteed loan limits will be increased annually based on an annual index of prices paid by farmers. **67 Fed. Reg. 41311 (June 18, 2002)**.

TOBACCO. The FSA has adopted as final regulations which amend the regulations that govern tobacco quotas and allotments to allow the transfer by sale of a flue-cured quota in either Georgia or Florida to another farm, for production on that farm, in another county in that state. The FSA held a referendum of producers to determine their opinion on the sale of allotments across county lines who voted to permit transfers across county lines and this rule implements those results. **67 Fed. Reg. 41310 (June 18, 2002)**.

FEDERAL ESTATE AND GIFT TAX

ADJUSTED TAXABLE GIFTS. The decedent had owned property separate from the decedent's spouse under an antenuptial agreement which provided that the spouse would assist in any conveyance of the property as required. The property was sold to the decedent's children in exchange for a promissory note. The decedent's estate included only half of the promissory note in the decedent's estate, claiming that the other half belonged to the spouse. The court held that the entire promissory note was included in the decedent's estate because the decedent was the sole owner of the property exchanged for the note. **Estate of Bailey v. Comm'r, T.C. Memo. 2002-152**.

ADMINISTRATIVE EXPENSES. The decedent had created two trusts, one for each of the decedent's two heirs. Most of the estate passed under the trusts. The estate claimed $48,000 in administrative expenses, including $16,000 in personal representative fees. The expenses were all allowed under state law, but the IRS objected to deduction for personal representative fees as to the trust assets and for much of the administrative expenses as not necessary to the administration of the estate. The court first held that, although an administrative expense had to be allowed under state law in order to be deductible for federal estate tax purposes, the validity under state law did not mean that the expenses was deductible under federal estate tax law. The appellate court agreed with the Tax Court that the passage of the trust assets was not part of the administration of the estate; therefore, no deduction was allowed for costs of administering the trusts, except the trustee's fee. **Estate of Grant v. Comm'r, 2002-2 U.S. Tax Cas. (CCH) ¶ 60,443 (2d Cir. 2002)**.

IRA. The decedent had established two trusts which were the sole beneficiaries of two IRAs owned by the decedent. During the decedent's life, the decedent received the minimum required distributions (MRD) and upon the decedent's death the trusts received the MRD based upon the life expectancy of the oldest beneficiary of each trust. The IRS ruled that the MRD paid to the trusts was included in trust income, was deductible by the trusts to the extent of trust DNI and was taxable to the beneficiaries in the year paid. **Ltr. Rul. 200226015, March 21, 2002**.

MARITAL DEDUCTION. The decedent's will created an annuity trust for the surviving spouse with an annuity amount of $100,000 annually. The trust also provided for an increase in the annuity to adjust for inflation. The decedent's estate representative elected to treat the trust as QTIP and included the value of the annuity with the inflation provision in the value of the trust for marital deduction purposes. The court held that the marital deduction was limited to the amount of the trust needed to produce the annuity but that the inflation increases could not be considered because the increases were contingent upon any inflation occurring. The appellate court affirmed in a decision designated as not for publication. **Estate of Sansone v. United States, 2002-2 U.S. Tax Cas. (CCH) ¶ 60,442 (9th Cir. 2002), *aff'g*, 2001-1 U.S. Tax Cas. (CCH) ¶ 60,399 (C.D. Calif. 2001)**.

VALUATION. The decedent had transferred assets to a family limited partnership and transferred limited partnership interests to the decedent's heirs. The partnership was held to be valid under state law and effective for federal estate tax purposes. The restrictions on the transferability of limited partnership interests and withdrawal rights did not subject the partnership interests to valuation under I.R.C. § 2703. The decedent's interest in the partnership was discounted 25 percent for lack of marketability and 25 percent for a minority interest. The Tax Court had denied an IRS request to amend its pleadings to include a claim that, under I.R.C. § 2036, the assets transferred to the partnership were included in the decedent's gross estate. The Tax Court acknowledged, however, that if such a claim was properly raised, it might have succeeded. The amendment was made two months before trial but was denied as untimely. The appellate court ruled that the amendment should have been allowed and remanded for consideration of that claim. The appellate court affirmed on all other points. **Gulig v. Comm'2002-2 U.S. Tax Cas. (CCH) ¶ 60,441 (5th Cir. 2002), *aff'g sub nom.*, Estate of Strangi v. Comm'r, 115 T.C. 478 (2000)**. **See also Harl, "More on Family Limited Partnerships," 12 *Agric. L. Dig.* 1 (2001)**.

The taxpayer created two limited partnerships and transferred limited partnership interests to a charitable organization and a grantor retained annuity trust (GRAT). The taxpayers children received general partnership interests. The partnership agreement had a provision that the partnership was to liquidate in January 2043 unless an earlier termination was agreed to by all partners. The taxpayer argued that the partnership interests were only assigned and not fully transferred because the partners did not agree to the transfers; the value of the limited partnership interests were to be discounted for lack of liquidity; and the interests were not subject to I.R.C. § 2704 because there were no applicable restrictions on liquidations. The court held that the partnership interests were fully transferred, the interests had to be valued at fair market value and the transfers were not subject to Section 2704 because the restrictions on liquidation did not exceed the restrictions provided by state law. **Kerr v. Comm'r, 2002-1 U.S. Tax Cas. (CCH) ¶ 60,440 (5th Cir. 2002), *aff'g*, 113 T.C. 450 (1999)**.

The decedent's estate consisted of 25 percent of the stock in a closely-held corporation which owned two motels. The decedent's estate also included an interest in a QTIP trust established by a predeceased spouse which consisted of another 25 percent ownership of the corporation. The court held that interests in the corporation were valued by first valuing the assets of the corporation and applying a 50 percent minority and lack of marketability discount to each 25 percent interest. **Estate of Bailey v. Comm'r, T.C. Memo. 2002-152**.

FEDERAL INCOME TAXATION

BAD DEBTS. The taxpayer contributed money to a corporation in exchange for a promissory note. The corporation filed for Chapter 11 bankruptcy a year later. The bankruptcy reorganization created a new corporation and distributed stock to the taxpayer in exchange for the note. The corporation, before and after bankruptcy, had assets in excess of its liabilities. The court held that the taxpayer could not claim a bad debt deduction for the promissory note because the taxpayer failed to prove that the note was worthless. **Favia v. Comm'r, T.C. Memo. 2002-154**.

CAPITAL GAINS AND LOSSES. The taxpayer sold stock "short" by borrowing shares in January of one taxable year. On December 31 of that year, the taxpayer placed an order to purchase shares to cover the short position and close out the short sale. The purchased stocks were settled with the lender in the following taxable year. The IRS ruled that, if the stock depreciates in value in the time between the short sale and settlement, the loss is realized on the settlement date in the second taxable year. If the stock appreciates in value, the gain is recognized on the date of the order of covering purchase. **Rev. Rul. 2002-44, I.R.B. 2002-28**.

CHARITABLE DEDUCTION. The taxpayer was a dentist and made contributions to a charitable organization. The charitable organization used the funds to purchase split-dollar life insurance policies on the taxpayer and agreed to split any proceeds with trusts established by the taxpayer. The organization provided receipts for the contributions but did not state that any benefits were received by the taxpayer. The court held that the taxpayer was not entitled to a charitable deduction based on the receipts which were not based on a good faith estimate of the value of the benefits received by the taxpayer. **Weiner v. Comm'r, T.C. Memo. 2002-153**.

COOPERATIVES. The taxpayer was a marketing cooperative with all capital supplied by member patrons and all income distributed on a patronage basis. The IRS ruled that the taxpayer was taxable as a cooperative under I.R.C. § 1381. **Ltr. Rul. 200224017, March 15, 2002**.

A non-tax exempt cooperative charged its members annual dues. The cooperative changed its bylaws to provide that the annual dues could be charged against the annual patronage dividend allocated or paid to members. The cooperative made the change in order to reduce the administrative costs of the dues. Members had the ability to elect not to have the dues charged against the dividends. The IRS ruled that the portion of the dividends used to pay the annual dues would be qualified dividends as patronage dividends "paid in money." **Ltr. Rul. 200226037, March 28, 2002**.

CORPORATIONS-ALM § 7.02.*

SHAREHOLDER LOANS. The court held that distributions to a shareholder were constructive dividends and not loans where (1) the promissory note was signed by the shareholder as lender and debtor; (2) the note was not the result of arm's-length negotiations; (3) and the note provide no fixed payment schedule or maturity date. **Boler v. Comm'r, T.C. Memo. 2002-155**.

DISASTER PAYMENTS. On June 13, 2002, the president determined that certain areas in Indiana were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of severe storms, tornadoes and flooding on April 28, 2002 through June 7, 2002. **FEMA-1418-DR**. On June 14, 2002, the president determined that certain areas in Minnesota were eligible for assistance under the Act as a result of severe storms, tornadoes and flooding on June 9, 2002. **FEMA-1419-DR**. On June 19, 2002, the president determined that certain areas in Iowa were eligible for assistance under the Act as a result of severe storms and flooding on June 3, 2002. **FEMA-1420-DR**. On June 19, 2002, the president determined that certain areas in Colorado were eligible for assistance under the Act as a result of wildfires beginning on June 3, 2002. **FEMA-1421-DR**. On June 25, 2002, the president determined that certain areas in Arizona were eligible for assistance under the Act as a result of wildfires beginning on June 18, 2002. **FEMA-1422-DR**. Accordingly, a taxpayer who sustained a loss attributable to these disasters may deduct the loss on his or her 2001 federal income tax return.

DISCHARGE OF INDEBTEDNESS. The taxpayer was the sole shareholder of two S corporations which operated a marina and a mobile home park. Both businesses eventually failed, with the corporations both owing money to the taxpayer. The taxpayer admitted that, in 1992, the taxpayer no longer owed the money to the corporations. However, the taxpayer provided no evidence of payment of the loans and provided no other evidence of the loan transactions with the corporations. The taxpayer also failed to prove that the taxpayer was insolvent when the loans were discharged; therefore, the court held that the taxpayer had discharge of indebtedness income which was not excluded from the taxpayer's income. **Toberman v. Comm'r, 2002-2 U.S. Tax Cas. (CCH) ¶ 50,472 (8th Cir. 2002), *aff'g*, T.C. Memo. 2000-221**.

The taxpayer had obtained a credit card in 1986 and had an outstanding balance when the taxpayer moved to a new address in another state several years later. The credit card company attempted to collect on the balance but was unable to contact the debtor until 2001 when the company sent a letter saying that a Form 1099-C was filed for 1998 listing discharge of indebtedness income. However, no Form 1099-C was presented as evidence by the IRS, and the IRS failed to provide any evidence of the date or amount of indebtedness discharged. The only identifiable event which occurred as to the debt was the company's cessation of collection efforts in 1996 and the issuance of the Form 1099-C for 1998. The court held that this was insufficient to prove any discharge of indebtedness occurred in 1998. **Sims v. Comm'r, T.C. Summary Op. 2002-76**.

EARNED INCOME CREDIT. The taxpayer's child lived with the child's grandmother from May 1999 to the end of 1999, except when on vacation from school. The taxpayer usually visited the child on weekends and paid rent to the grandmother for the child. The court held that, because the child lived less than 50 percent of the tax year with the taxpayer, the child was not a qualifying child for earned income credit purposes. **Chandler v. Comm'r, T.C. Summary Op. 2002-73**.

ELECTRICITY PRODUCTION CREDIT. The IRS has announced the 2002 inflation adjustment factor (1.1908) and reference prices used in determining the availability of the renewable electricity production credit to taxpayers producing electricity using wind (5.54 cents per kilowatt hour) or closed-loop biomass and poultry waste (10 cents per kilowatt hour). The inflation adjustment factor and reference prices apply to calendar year 2002 sales of kilowatt hours of electricity produced in the U.S. and its possessions from qualified energy resources. The renewable electricity production credit for calendar year 2002 is 1.8 cents per kilowatt hour on the sale of electricity produced from wind, closed-loop biomass, and poultry waste energy resources. . **Notice 2002-39, I.R.B. 2002-—**.

EMPLOYEE BENEFITS. The taxpayer adopted a plan for reimbursement of a portion of laser surgery (radial keratotomy) for employees who have been employed for at least one year. No employee contributions are made and the benefit may not be exchanged for other employee benefits. The IRS ruled that the amounts received as reimbursements under the plan were not included in the employees' income and did not affect the taxation of other employee benefits of the employees. **Ltr. Rul. 200226003, March 7, 2002**.

HOBBY LOSSES. The taxpayers purchased an 85 acre farm which was covered with trees. The taxpayers cleared most of the farm, built a residence on the property and started a tree farm. The taxpayers had nonfarm income from wages and a pension. The court held that the tree farm was not operated with an intent to make a profit because (1) the taxpayers did not keep full and accurate records sufficient to determine the profitability of the operation and did not make any attempts to change the business to make it profitable; (2) the taxpayers did not have or seek expert advice as to making the tree farm profitable; (3) although the taxpayers spent a considerable amount of time and work on the farm, most of the effort was not involved with the tree raising or selling part of the operation; (4) the taxpayers failed to prove how much appreciation in the property and trees had occurred or would occur to offset the losses; and (5) the taxpayers had not successfully operated any other similar business. The other factors of Treas. Reg. § 1.183-2(b) were held to be neutral on this issue. **Zarins v. Comm'r, 2002-1 U.S. Tax Cas. (CCH) ¶ 50,471 (6th Cir. 2002),** ***aff'g*****, T.C. Memo. 2001-68**.

The taxpayers purchased a lake front lodge, restored the lodge and formed an S corporation to operate the lodge. Although the taxpayer claimed that the lodge was a business property which was to be rented to the public, the lodge was renovated for use as a vacation home and was never rented to the public. The court held that the taxpayer and corporation could not claim any deductions for renovation or operation of the lodge because it was not operated with the intent to make a profit but was used solely for personal recreation. **Baldwin v. Comm'r, T.C. Memo. 2002-162**.

IRA. In the summer of 1997 Congress created the so-called Roth IRA and provided that ordinary IRAs could be "rolled over" into Roth IRAs. The form that the legislation took, however, meant that if funds from a regular IRA were rolled over into a Roth IRA and then immediately withdrawn, the I.R.C. § 72 10 percent addition to tax would not apply. After Congress discovered this situation, in July 1998, it subjected such withdrawals to the 10 percent tax, effective January 1, 1998. The taxpayer had made a rollover distribution from an IRA to a Roth IRA and distributed funds from the Roth IRA prior to passage of the corrective legislation. Because the legislation was made retroactive, the taxpayer was assessed the 10 percent addition to tax on the withdrawal from the Roth IRA. The taxpayer challenged the retroactive application of the 10 percent tax to the withdrawal as unconstitutional because it was (1) a retroactive imposition of a penalty that denies the taxpayer due process, in violation of the Fifth Amendment, (2) a taking of the taxpayer's property, for which the taxpayer was entitled to just compensation under that amendment, and (3) the imposition of an excessive fine, in violation of the Eighth Amendment. The court held that the retroactive application of the amendment was constitutional. **Kitt v. United States, 288 F3d 1355 (Fed. Cir. 2002),** ***aff'g on rehearing*****, 2002-1 U.S. Tax Cas. (CCH) ¶ 50,167 (Fed. Cir. 2002)**.

PARTNERSHIPS-ALM § 7.03.*

DISTRIBUTIVE SHARE. The decedent and brother had orally agreed to combine their farming and oil exploration businesses as a partnership with each partner receiving 50 percent of the partnership. However, one brother operated the farm and the other operated the oil business and the partners agreed that the farm income was to be allocated to the brother and the oil profits allocated to the decedent. The primary issue in the case was the allocation of gain from the sale of grain by the partnership in the year of the decedent's death. The estate argued that the partnership agreement allocated all of the income to the brother. The court rejected the oral agreement to allocate the profits from the individual business because the agreement lacked economic substance. The court held that the decedent was a 50 percent partner and that the grain was partnership property when it was sold; therefore, the decedent and the decedent's estate received a 50 percent distributive share of the income from the grain sale. **Estate of Ballantyne v. Comm'r, T.C. Memo. 2002-160**.

PASSIVE ACTIVITY LOSSES. The taxpayer owned several residential rental properties and was employed full-time with a state agency. The taxpayer claimed losses from the rental activities and characterized the losses as nonpassive because the taxpayer claimed to have spent 2,440 hours on the activity and qualified for the real estate professional exception to the passive loss rules. The taxpayer claimed that 1,440 hours was spent as "phone-in office hours 360 days a year" in which the taxpayer was available for phone calls from tenants for four hours each day. The taxpayer did not claim that the taxpayer spent fours hours each day on the phone with tenants. The court held that the 1,440 hours could not be included because the taxpayer was not actually involved with the properties during those hours; therefore, the losses were passive losses. **Monroe v. Comm'r, T.C. Summary Op. 2002-79**.

PENSION PLANS. The taxpayer was a C corporation that sponsored a calendar year profit sharing plan qualified under I.R.C. § 401(a). The plan year is the calendar year. On April 1, 1997, a disqualified person with respect to the plan obtained a two-year loan in the amount of $10,000 from the plan's tax-exempt trust. The loan was secured solely by the person's account balance in the plan. At the time of the loan, the person's account balance was $12,000. According to the terms of the loan, the person was to make substantially equal payments of principal and interest to the plan's trust on the first business day of every calendar quarter. The interest rate of the loan was 11 percent, compounded annually, which was equal to or greater than a fair market rate of interest for such a loan at that time. The person made no payments on the loan until December 31, 1999, at which time the person repaid the loan, including principal and accrued interest. The repayment constituted a "correction" within the meaning of I.R.C. § 4975(f)(5). None of the Forms 5500 that were filed for the plan for 1997, 1998, or 1999 reflected a loan to the person. The IRS ruled that, when a loan from a qualified plan that is a prohibited transaction spans successive taxable years, and thus constitutes multiple prohibited transactions, and during those years the first tier prohibited transaction excise tax rate changes, the first tier excise tax liability for each prohibited transaction is the sum of the products resulting from multiplying the amount involved for each year in the taxable period for that prohibited transaction by the excise tax rate in effect at the beginning of that taxable period. **Rev. Rul. 2002-43. I.R.B. 2002__**.

RETURNS. The IRS has released specifications for filing Forms 1098, 1099, 5498 and W-2G with the IRS electronically through the IRS FIRE System or magnetically, using IBM 3480, 3490, 3490E, 3590, 3590E, or AS400 compatible tape cartridges, or 3.5 inch diskettes. The IRS/Martinsburg Computing Center (IRS/MCC) no longer accepts one half-inch 9-track magnetic tape for the processing of information returns. This procedure must be used for the preparation of 2002 tax year information returns and information returns for tax years prior to 2002 filed beginning January 1, 2003, and received by

***Agricultural Law Manual* (ALM).**

IRS/MCC or postmarked by December 10, 2003. **Rev. Proc. 2002-34, I.R.B. 2002-25, 1205**.

SAFE HARBOR INTEREST RATES
July 2002

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	2.84	2.82	2.81	2.80
110 percent AFR	3.12	3.10	3.09	3.08
120 percent AFR	3.41	3.38	3.37	3.36
		Mid-term		
AFR	4.60	4.55	4.52	4.51
110 percent AFR	5.07	5.01	4.98	4.96
120 percent AFR	5.53	5.46	5.42	5.40
		Long-term		
AFR	5.69	5.61	5.57	5.55
110 percent AFR	6.27	6.17	6.12	6.09
120 percent AFR	6.84	6.73	6.67	6.64

Rev. Rul. 2002-40, I.R.B. 2002-__.

TAX ON SOCIAL SECURITY BENEFITS. In 1997 the taxpayer received social security benefits for 1997, 1996, 1995 and 1994. The taxpayer erroneously did not include any of the payments in income. An election under I.R.C. § 86(e) provides that, if the election is made, the amount included in gross income for the taxable year of receipt must not exceed the sum of the increases in gross income for those previous taxable years that would result from taking into account the portion of the benefits attributable to the previous taxable years. The taxpayer did not make this election and the court held that all of the disability payments received in 1997 were taxable in 1997. **Nicholas v. Comm'r, T.C. Summary Op. 2002-77**.

WITHHOLDING TAXES. The IRS has announced that until IRS issues further guidance, in the case of a statutory stock option, i.e. , an incentive stock option (ISO) described in I.R.C. § 422(b) or an option granted under an employee stock purchase plan (ESPP) described in I.R.C. § 423(b), the IRS will not assess the FICA tax or FUTA tax, or apply federal income tax withholding obligations, upon either the exercise of the option or the disposition of the stock acquired by an employee pursuant to the exercise of the option. The IRS anticipates that any final guidance that would apply employment taxes to statutory stock options will not apply to any exercise of a statutory stock option that occurs before January 1 of the year that follows the second anniversary of the publication of the final guidance. **Notice 2002-47, I.R.B. 2002-__**.

IN THE NEWS

CONSERVATION RESERVE PROGRAM. Farmers and ranchers in parts of drought-hit Montana and South Dakota are allowed to harvest hay from land enrolled in the Conservation Reserve, the Agriculture Department said. USDA also provided $1.9 million for South Dakota and $90,000 to Montana in Emergency Conservation funds to construct or deepen wells, develop seeps and springs, install pipelines and haul water for livestock. Up to $2 million in additional funds was earmarked from Montana if needed. Haying on land idled in the long-term Conservation Reserve will provide a source of feed for livestock, USDA said. Haying was authorized until Aug. 28. Landowners without livestock can rent or lease the haying privilege to livestock producers in their county. Emergency haying was authorized for 33 counties in Montana - Big Horn, Blaine, Broadwater, Carbon, Carter, Cascade, Chouteau, Custer, Dawson, Fallon, Fergus, Garfield, Glacier, Golden Valley, Hill, Jefferson, Judith Basin, Lewis and Clark, Liberty, Meagher, Musselshell, Phillips, Pondera, Powder River, Prairie, Rosebud, Sheridan, Stillwater, Teton, Toole, Treasure, Wheatland and Yellowstone. The counties also have been approved for emergency grazing of Conservation Reserve land. In South Dakota, 28 counties were approved for emergency haying - Aurora, Bon Homme, Brown, Butte, Campbell, Corson, Dewey, Edmunds, Faulk, Haakon, Hand, Harding, Hughes, Hyde, Jackson, Jones, Lyman, Marshall, McPherson, Pennington, Perkins, Potter, Spink, Stanley, Sully, Walworth and Ziebach. They also were authorized for emergency grazing. **Reuters News Service**.

SELF-EMPLOYMENT INCOME. In a Tax Court petition filed December 4, 2001, the taxpayers owned a 16.66% interest in a general partnership, which rented farmland on a cash rent basis to a corporation. The taxpayers reported their shares of rental income on Schedule E for each year. However, the IRS determined that the income derived from this partnership was self-employment income subject to self-employment tax. The taxpayers claimed that the cash rents at issue were determined independently of their participation and were consistent with the fair rental value for similar land at that time. The rental amounts were also determined to be fair by a third-party credit company. The rental income was not received pursuant to a lease agreement and material participation in the production or management of crops by the petitioners was not required. The corporation also rented land on a cash rent basis from unrelated third parties and only one of these leases contemplated participation by the owners. The petitioners assert that the IRS erred in determining that they are subject to self-employment tax on their portion of cash rental income received from the partnership. In addition, the taxpayers claim that the IRS erroneously included a gain from the sale of equipment by the farming partnership in its calculation of the self-employment income of the taxpayers. **CCH Federal Taxday, June 20, 2002**.

WATER. Mexico will send to U.S. farmers 6 percent of the water it owes them and get funding for water-conservation projects as part of an agreement unveiled on June 29 to end a simmering dispute between the border neighbors. Texas water officials criticized the deal, saying it fell far short of what the state's farmers need. Drought-hit Mexico has built up a huge water debt to parched farms in Texas under a 1944 treaty governing flows from the Rio Grande River, called Rio Bravo in Mexico, which serves as a border between the countries. Under the agreement, Mexico will release about 90,000 acre-feet (111 million cubic meters) of water, of the 1.5 million acre-feet (185 billion cubic meters) owed, into the Rio Grande River for use by Texas farmers. The two countries said they would invest some $210 million over the next four years in irrigation, water-conservation and infrastructure projects, mainly in the Mexican states of Coahuila, Chihuahua and Tamaulipas, which border on Texas. **Richard Jacobsen, Reuters News Service**.

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AGRICULTURAL TAX AND LAW SEMINARS

by Neil E. Harl and Roger A. McEowen

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"Farm & Ranch Income Tax" and "Farm & Ranch Estate and Business Planning."

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The seminar registration fees for current subscribers to the *Agricultural Law Digest*, the *Agricultural Law Manual*, or *Principles of Agricultural Law* (and for multiple registrations from one firm) are $185 (one day), $360 (two days). The registration fees for nonsubscribers are $200 and $390 respectively.

Registration brochures will be mailed in late July. However, complete information and a registration form are available now on our web site at http://www.agrilawpress.com. For more information, call Robert Achenbach at 1-541-302-1958, or e-mail to **robert@agrilawpress.com**

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